

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6455 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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MANAJI S THAKORE

Versus

TALUKA DEVELOPMENT OFFICER

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Appearance:

Shri A.J.Patel, Advocate, for the Petitioners.

Shri T.H.Sompura, Assistant Government Pleader, for the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 17/04/96

ORAL JUDGEMENT

The order passed by the Taluka Development

Officer at Sanand (respondent No.1 herein) on 12th July 1986 as affirmed in revision by the order passed by and on behalf of the State Government (respondent No.2 herein) on 24th February 1987 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, respondent No.1 directed the petitioners to be evicted from and to remove the construction raised by them in one parcel of land bearing Block No.126 situated at village Navapura taluka Sanand (the disputed land for convenience) and also ordered them to pay additional assessment in the sum of Rs.231.70 p. and local fund in the sum of Rs.231.70 p. and education cess in the sum of Rs.58 from 19th August 1986 for unauthorised non-agricultural use of the disputed land.

2. The facts giving rise to this petition move in a narrow compass. The petitioners appear to have raised in the disputed land one house styling it to be 'farm house' in all admeasuring about 115 square metres. That is a pacca construction. They also appear to have raised a kachha farm house admeasuring about 52 square metres. The total constructed area would be around 167 square metres. It appears that respondent No.1 came to know of such construction. He thought that it was unauthorised non-agricultural use of the disputed land. He thereupon served to the petitioners a show cause notice some time in December 1985 calling upon the petitioners to show cause why an action under section 66 of the Bombay Land Revenue Code, 1879 (the Code for brief) should not be taken for unauthorised non-agricultural use of the disputed land. Its copy is at Annexure-AA to this petition. The petitioners filed their reply thereto on 3rd February 1986 and indicated therein that the construction raised by them is for more convenient use of the disputed land for agricultural purposes. Its copy is at Annexure-A to this petition. Thereafter, by his order passed on 12th July 1986, respondent No.1 directed the petitioners to be evicted from the disputed land and to remove the construction therefrom and ordered them to pay additional assessment in the sum of Rs.231.70 p., local fund in the sum of Rs.231.70 p. and education cess in the sum of Rs.58 from 19th August 1986. Its copy is at Annexure-B to this petition. The aggrieved petitioners carried the matter in revision before respondent No.2 under section 211 of the Code. It came to be registered as Revision Application No.SRD.687 of 1986. An interim order came to be passed therein by and on behalf of respondent No.2 on 30th August 1986 staying the operation of the order at Annexure-B to this petition. Its copy is at Annexure-C to this petition. Thereafter, by the order passed by and on behalf of respondent No.2 on 24th

February 1987 in the aforesaid revisional application, respondent No.2 rejected it. Its copy is at Annexure-D to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-B to this petition as affirmed in revision by the order at Annexure-D to this petition.

3. Learned Assistant Government Pleader Shri Sompura for the respondents has raised a preliminary objection regarding maintainability of this petition under Article 227 of the Constitution of India. Thereupon, learned Advocate Shri A.J.Patel for the petitioners has orally applied for leave to convert this petition as also under Article 226 of the Constitution of India. Such oral request is accepted and the petition is ordered to be treated as also under Article 226 of the Constitution of India on payment of the deficit court fees, if any, within two weeks from today.

4. The grievance voiced by the petitioners is that the construction was a farm house for more convenient use of the disputed land for agricultural purposes and it was a permissible construction within section 65 of the Code. Learned Advocate Shri Patel for the petitioners has also voiced a grievance that the Circle Inspector was required to make an on the spot inquiry and to make a report to respondent No.2 and a copy of his report was not given to the petitioners or their representative at the time of hearing resulting in denial of the audi alteram partem rule. As against this, learned Assistant Government Pleader Shri Sompura for the respondents has urged that, as transpiring from the impugned orders, what is constructed by the petitioners in the disputed land is a bungalow and not a farm house, and as such the impugned orders call for no interference by this court in this petition under Article 226 of the Constitution of India.

5. It is an admitted position on record that respondent No.1 directed the Circle Inspector to make an on the spot inquiry with respect to the construction in question and to make his report in that regard. It cannot be gainsaid that in such an inquiry the petitioners or their representative ought to have been associated. In any case, a copy of the report of the Circle Inspector ought to have been given to the petitioners or their representative so that they could have met the case against them if it was found in the Circle Inspector's report. The petitioners have clearly averred in this petition that neither they were nor their

representative was associated with any such inquiry made by the Circle Inspector nor were they supplied a copy of his report so as to enable them to meet with the case, if any, against them therein. This specific averment made by the petitioners in the memo of petition has not been controverted by or on behalf of the respondents in any manner. The aforesaid averments have thus remained uncontroverted. There is no reason why such uncontroverted averments should not be accepted. It would mean that the petitioners have been denied an opportunity to meet with the case on the basis of the material collected behind their back. That would certainly amount to violation of the audi alteram partem rule enshrined in principles of natural justice. It cannot be gainsaid that any order passed in contravention of principles of natural justice is null and void. An order affirming such null and void order will be of no consequence.

6. I am fortified in my view by the binding Division Bench ruling of this court in the case of T.S.RABARI v. GOVERNMENT OF GUJARAT reported in 1991 (2) 32 (2) GUJARAT LAW REPORTER at page 1035.

7. It appears that neither respondent has applied his or its mind with respect to the relevant provisions contained in section 65 of the Code. It permits raising of a farm building for convenient use of agricultural land. The expression "farm building" has not been defined in the Code. In that view of the matter, recourse will have to be taken to its dictionary meaning. It consists of two words, namely, "farm" and "building". In OXFORD ADVANCED LEARNER'S DICTIONARY (Indian Edition Fourth Impression 1994), 'farm' has been defined inter alia to mean area of land and the buildings on it used for growing crops or raising animals. It thus becomes clear that the word "farm" connotes not only a piece of agricultural land but an area of land with a house constructed therein to be used for agricultural purposes. The word "building" has been defined in the very same dictionary inter alia to mean structure with a roof and walls. It would mean that a pacca structure with roof and walls would be within the meaning of the word "building". It appears that the authorities below have not addressed themselves on this aspect of the matter. They have just jumped to the conclusion that the structure raised in the disputed land is a bungalow. The word 'bungalow' has been defined in the aforesaid dictionary to mean a small house with one storey.

8. Learned Advocate Shri Patel for the petitioners

has invited my attention to the photographs at Annexures-E and F to this petition and has submitted that by no stretch of imagination can the structure reflected in the photographs be said to be a bungalow. I think it would be for the authorities to decide whether or not the structure reflected in the photographs at Annexures-E and F to this petition is in the nature of a bungalow or a farm building. It would be sufficient to mention that the respondents have not addressed themselves on this aspect of the matter. The impugned orders at Annexures-B and D to this petition can therefore be said to be suffering from the vice of non-application of mind on the part of their respective authors.

9. In view of my aforesaid discussion, I am of the opinion that the impugned the orders at Annexures-B and D to this petition cannot be sustained in law. They have to be quashed and set aside. The matter will have to be remanded to respondent No.1 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine after giving an opportunity of hearing to the petitioners.

10. In the result, this petition is accepted. The order passed by the Taluka Development Officer at Sanand (respondent No.1 herein) on 12th July 1986 at Annexure-B to this petition as affirmed in revision by the order passed by and on behalf of the State Government on 24th February 1987 at Annexure-D to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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